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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS LEE JOHNSON,

Defendant and Appellant.

B217455

(Los Angeles County
Super. Ct. No. YA072509)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Eric C. Taylor, Judge. Dismissed.

Sharon Fleming, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Thomas Lee Johnson appeals from the judgment entered following his guilty plea to one count of receiving stolen property. (Pen. Code, § 496, subd. (a).) Appellant admitted the allegation that he had one prior conviction and was sentenced pursuant to the plea agreement to 32 months in prison.

On July 28, 2008, Guy Gardner rented a concrete saw worth about \$2,500 from A-1 Rentals. The saw subsequently was stolen from the job site at which Gardner was working. Officer Henry Flores stopped a Jeep Cherokee being driven by appellant and found the saw and other construction equipment in the back of the vehicle. Codefendant Mario Flores was a passenger in the car. Johnson told the officer that all the equipment in the car belonged to him. Several pawn slips in Flores's and Johnson's names were found in the car, and a clerk from the pawnshop testified about pawnshop receipts for tools in both their names.

On August 27, 2008, appellant and Flores were charged by information with grand theft (Pen. Code, § 487, subd. (a)) and receiving stolen property (Pen. Code, § 496, subd. (a)), and appellant was charged with driving without a license (Veh. Code, § 12500)). It was further alleged that appellant had suffered five prior convictions within the meaning of Penal Code sections 1170.12, subdivisions (a) through (d) and 667, subdivisions (b) through (i), as to the first two counts. Appellant pled not guilty and denied the allegations.

At an October 22, 2008 hearing, defense counsel informed the court that appellant wished to represent himself. The court stated that it would grant appellant's request if appellant would be ready for trial the following day. Flores's counsel then sought a two-week continuance, and the court agreed to give her a little over a week. The court questioned appellant about his ability to represent himself and told appellant he would need to be ready for trial in a week. The court then told appellant that he would "be expected to know the law, do the things any other lawyer would do representing yourself in this case," and that if he could not do so, the court would deny his motion. Appellant replied that he could not do so, so the court denied appellant's motion to represent

himself. On November 6, 2008, appellant filed a motion to suppress evidence, but the motion was withdrawn in January of 2009.

On January 26, 2009, appellant filed a *Romero* motion, asking the court to dismiss four of his five prior convictions. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.) Defense counsel argued that appellant's conviction for assault was "23 years ago when he was 19 years old and it didn't appear to be of such seriousness that he got more than five years" The court pointed out that, after appellant's release, he returned to prison in 1989 for forgery and he was arrested a few years later on a cocaine charge. After further discussion of appellant's record, the court denied the motion. Because appellant's exposure was 25 years to life, defense counsel stated that "[m]y strong advice was to take the 32 months [offered by the court]." The plea deal was "a package offer" to both appellant and Flores.

On February 19, 2009, appellant and Flores pled no contest to one count of receiving stolen property. (Pen. Code, § 496, subd. (a).) The court explained appellant's rights to him and stated that the court would sentence him to 32 months. Flores was to receive a sentence of three years formal felony probation. Because appellant agreed to admit one of his prior strikes, the court agreed to dismiss the other four strikes. After determining that the pleas were knowing, intelligent, and voluntary, the court accepted the pleas. Appellant admitted that he had a prior conviction for robbery, a violation of Penal Code section 211, on May 7, 1986. The other counts were dismissed.

On March 26, 2009, over the People's objection, the court granted appellant's request to continue probation and sentencing in order for him to complete a drug program in county jail. On May 11, 2009, appellant was sentenced pursuant to the plea agreement to the low term of 16 months, doubled to 32 months for appellant's prior strike. Appellant was given credit for 288 days in actual custody and 144 days good time/work time credit.

On July 2, 2009, appellant filed a notice of appeal and a request for a certificate of probable cause. The grounds for the certificate of probable cause were the denial of his

Romero motion, defense counsel's recommendation to take the plea agreement, and the court's denial of a continuance when appellant sought to withdraw his plea before sentencing. The court denied his request for a certificate of probable cause.

Appellate counsel filed an amended request for a certificate of probable cause, based on her determination that appellant might have a meritorious issue based on the denial of his *Faretta* motion to represent himself. (*Faretta v. California* (1975) 422 U.S. 806.) The superior court denied the request on November 9, 2009.

On December 28, 2009, appellant filed a petition for writ of mandate in this court in case No. B221216. The court denied the petition on December 30, 2009.

After review of the record, appellant's court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

On December 29, 2009, we granted appellant's request to augment the record to include the trial court's order denying appellant's amended request for a certificate of probable cause. On February 9, 2010, we advised appellant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. On March 15, 2010, we granted appellant's request for an extension of time to file a supplemental brief. Appellant filed his supplemental brief on May 13, 2010. On May 28, 2010, we directed appellant's counsel to file a letter brief indicating why the appeal should not be dismissed for failure to obtain a certificate of probable cause.

Appellate counsel filed a letter on June 24, 2010, contending that the question of whether the trial court erred in denying appellant's *Faretta* motion is a meritorious issue to be addressed. (See *People v. Marlow* (2004) 34 Cal.4th 131, 146 [holding that a claim of *Faretta* error is cognizable on appeal following a guilty plea].)

In his supplemental brief, appellant contends that Flores intimidated him into pleading guilty and that the offer of a plea bargain to Flores denied appellant his right to a trial because this precluded Flores from exculpating appellant. Appellant also claims that he was prejudiced by appellate counsel's failure to attach the amended request for a

certificate of probable cause as an exhibit to the writ petition that was filed in December 2009. Appellant challenges the superior court's denial of his *Romero* motion to strike his prior convictions and claims ineffective assistance of counsel.

A certificate of probable cause is required for an appeal challenging the validity of a plea. (*People v. Brown* (2010) 181 Cal.App.4th 356, 359.) Because appellant failed to obtain a certificate of probable cause, he is precluded from challenging the validity of his plea and from challenging the validity of his sentence, which was part of his negotiated plea. (*People v. Panizzon* (1996) 13 Cal.4th 68, 76-78.) None of appellant's claims are cognizable on appeal absent a certificate of probable cause. The appropriate remedy accordingly is to dismiss the appeal. (Pen. Code, § 1237.5; *People v. Mendez* (1999) 19 Cal.4th 1084, 1099 [explaining that the appellate court "may not proceed to the merits of the appeal, but must order dismissal thereof" where the defendant has not obtained a certificate of probable cause].)

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The appeal is dismissed.

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EPSTEIN, P.J.

We concur:

WILLHITE, J.

MANELLA, J.